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EXAMINER

LAYNO, CARL HERNANDZ

ART UNIT PAPER NUMBER

3766

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,328

Applicant(s)

KIRCHGEORG ET AL.

Examiner

Carl H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 13-18 and 30 is/are rejected.
- 7) ☒ Claim(s) 12, 19-29 and 31-39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

SUPPLEMENTAL ACTION

1. This supplemental action rectifies/clarifies the Examiner's position with respect to the use of the Anderson (US 4,197,842), Wiesmann et al (US 6,199,550), and Weismann (US 6,606,993) patents, which were imprecisely applied against applicant's amended claims in the last Office action, as pointed out by the applicant's representative Bill Blake in a telephone conversation on (or about) November 14, 2006. In response to this telephone conversation, the Examiner has withdrawn the Wiesmann et al references in favor of other more pertinent references. See below.

2. Acknowledgment is made of applicant's amendment, which was received by the Office on July 17, 2006.

3. Claims 1-10 are canceled. Claim 11 has been amended. Claims 11-39 are active.

Specification

4. In view of the applicant's modifications to the specification, the Examiner is withdrawing the objection, which was made against the specification in the last Office action.

Claim Objections

5. Claims 33-35 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel

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the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, claims 33-35 repeat what has already been stated in claims 27-29, respectively. In addition, these claims do not recite any additional positive structure to what is already present in claims 27-29.

Claim Rejections - 35 USC § 102

6. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(b) rejection of Anderson '842, which was made against claims 11 and 13 in the last Office action.

Claim Rejections - 35 USC § 103

7. In view of the inapplicability of the Anderson '842 reference, the Examiner is also withdrawing the 35 U.S.C. 103(a) rejection of Anderson '842 in view of Remes et al '841, which was made against claims 15 and 16 in the last Office action.

8. The following new rejections are being made in view of newly discovered prior art references.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11, 13-18, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 4,197,842) in view of either Buan et al (US 6,532,958), Snook et al (US 4,932,402), Mondry (US 5,682,877), or Chua et al (US 5,626,131).

The Anderson (US 4,197,842) patent, cited in the last office action, describes a portable pulmonary respirator system (Fig.1) including a bottle of oxygen 10 and an oxygen gauge 29 enclosed in a single unitary "suitcase-type carrying" case 9 (col.1, lines 60-61). Since the vast majority of suitcases have handles for single hand pick up, the use of a handle or strap for carrying the case of Anderson would be inherent. Unlike applicant's device, that of Anderson fails to provide a "measurement system" capable of measuring a patient's respiratory gas characteristics, as claimed by the applicant.

The use of portable oxygen supply systems having "measurement systems" for measuring a patient's respiratory gas content appear to be numerous.

The Baum et al (US 6,532,958) patent describes a supplemental respiratory oxygen system, which includes sensors for measuring the patient's blood oxygen content (Abstract, lines 10-13 and Fig.4). This information is used in a control loop to properly adjust the amount of oxygen being delivered to the patient. The system of Baum et al may be used in either a "residential setting" or for "ambulatory situations" (col.7, lines 1-5).

The Snook et al (US 4,932,402) patent describes a supply system that supplies a patient with supplemental doses of medicinal gases (e.g. oxygen) (col.2, lines 36-40) in an intermittent manner. The system includes a bottle of oxygen or medicinal gas 18 (Fig.1) and a sensing means (col.2, lines 61 thru col.3, line 3) that is capable of measuring, among other parameters, "breath

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oxygen content” (col.2, line 68). The system of Snook may be produced as a “portable unit” and may be carried by patients (col.52, lines 28-30).

The Mondry (US 5,682,877) patent describes a system and method for automatically maintaining a blood oxygen saturation level (Abstract, lines 1-3). This system is portable since it is “particularly suited for use with ambulatory patients” (Abstract, lines 3-4) and includes the use of an oximeter 12 (Fig.1) connected to a patient’s finger for detecting pulse rate and oxygen saturation (col.3, lines 33-39).

The Chua et al (US 5,626,131) patent describes a system and method for intermittent gas-insufflation (Fig.1) including a portable oxygen supply tank 12 (col.5, line 4). The system may additionally include a “blood-oxygen concentration device” with an oximeter for connection to the patient’s ear as part of a feedback circuit for modifying the amount of oxygen being supplied to the patient (col.15, lines 31-38).

To have used an oxygen measurement system with the portable oxygen supply of Anderson would have been an obvious modification to one of ordinary skill since there appears to be a preponderance of evidence (as suggested by the Baum et al, Snook et al, Mondry, and Chua et al references) that the use of blood oxygen sensors in combination with portable oxygen supply systems is old and well known in the art of patient oxygen supply systems.

Allowable Subject Matter

11. Claims 12, 19-29, 31, 32, and 36-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Eppolito (US 4,438,764) describes a portable oxygen supply system (Figs.1-4) having a strap capable of being carried by the single hand of an individual. Unlike applicant's device Eppolito does not recite the use of a "measurement system" in the manner claimed by the applicant.

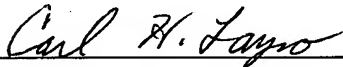
The Gaeke et al (US 4,944,292) patent describes a portable oxygen delivery unit capable of being carried by a single hand by using handle **58** (Fig.2). The system includes a portable unitary case **22** (Figs.1 and 1A) also having a handle. Unlike applicant's device the oxygen supply system of Fig.2 is not enclosed by case **22**.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO
PRIMARY EXAMINER

CHL

11/30/2006